IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 905 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DEPUTY EXECUTIVE ENGINEER (PANCHAYAT) - Petitioner(s)
Versus
RAMJIBHAI UKABHAI - Respondent(s)

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Appearance :
MR PJ KANABAR for Petitioner(s) : 1,
MR JD AJMERA for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 02/08/2007

ORAL JUDGMENT

Shri P.J.Kanabar, learned counsel for the petitioner; Shri J.D. Ajmera, learned counsel for the respondent.

2. The petitioner- Deputy Executive Engineer, [Panchayat], Roads & Buildings Sub Division, Rajula, being aggrieved by the award made by the Labour Court, Bhavnagar in Reference [LCB] No. 1769 of 1987 [old Reference [LCB] No. 105/93] dated 22.10.1997 is before this Court with a submission that the award is patently illegal, because, the Court below illegally closed the right of the petitioner to lead evidence. It was submitted that the petitioner wanted to examine one Shri Lalani, a witness to prove certain facts, the Court below allowed the application subject to cost, the cost was paid by the petitioner and thereafter, summons were issued to the witness. On two occasions, summons were served upon the witness but the witness did not remain in attendance. Thereafter, the present respondent workman, behind the back of the petitioner on 14.7.97 made an application before the Labour Court that right of the petitioner-establishment to lead the evidence be closed, the learned Court below, without hearing the petitioner ordered that the right of the

petitioner to lead the evidence is closed. According to the learned counsel for the petitioner, such procedure is unheard of and is unknown to law, according to him, if the witness, despite service of notice was absent, the Court should have issued coercive process against the witness or in any case, observed the principles of natural justice, after providing an opportunity of hearing to the petitioner should have passed the orders on the application filed by the workman.

3. Shri J.D. Ajmera, learned counsel for the respondent submitted that even if the application for closing the right of the petitioner to lead evidence was allowed exparte and the right was closed, then, it was a duty cast upon the petitioner to make an application for review of the order.

4. In the opinion of this Court, the argument of Shri Ajmera cannot be allowed to stand, because, it is not expected from a party that he would start making applications for review against the order which illegally closes his right to lead

evidence. Even otherwise, the respondent, to show his honesty after receiving the notice on the application should have submitted before the Court that the award be set aside and the matter be remanded back to the learned Labour Court. If the respondent-workman has derived certain benefits from the award, then, he cannot be allowed to say that the wrong was on the part of the present petitioner.

5. It was then contended that if the Court is pleased to remand the matter, then, the respondent be protected in view of the fact that he has already been reinstated and amount of Rs. 30,000/- has been paid to him. The respondent has been reinstated and has been paid certain amount in execution of the award. If the award does not stand, then, benefits flowing from the said award cannot flow continuously. If the source stops, then, then river has to dry. In the present matter, if the award does not stand, then, the present respondent workman cannot be allowed to say that he would be allowed to continue as workman of the petitioner. Once the award is set

aside, then, the parties would be relegated to their original position and in this case, the original position was that the workman was a dismissed employee.

6. As the learned Court below has illegally closed the right of the petitioner to lead evidence, which has led to illegal award, I hereby set aside and quash the award dated 22.10.1997 passed in Reference [LCB] No. 1769 of 1987, and the order directing closure of the evidence of the petitioner. The application dated 14.7.97 shall be heard by the learned Labour Court after providing due opportunity to the parties. If the Court below feels that present is a case for issuing coercive process against the witness, then, the Court below shall issue such process.

7. The parties present before the Court shall appear before the Labour Court on 11th September, 2007. It shall be the duty of the present petitioner to produce copy of this order before the said Court to inform the said Court as to what it is required to do. If the petitioner convinces the Court that coercive process is required to be

issued to the witness, then, such process shall be issued and the witness shall be examined in the Court. Proper and appropriate opportunity to lead the evidence shall be given to the present petitioner. It is expected of the Labour Court that it shall finally decide the matter within a period of eight months from the date of the appearance of the parties.

8. It is again made clear that once the award is set aside, the respondent would not be entitled to any interim relief.

9. The petition is allowed to the aforesaid extent. Rule is made absolute accordingly. No costs.

[R.S. GARG, J.]

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